

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: CS/SB1152

INTRODUCER: Banking and Insurance Committee and Senator Bennett

SUBJECT: Funeral, Cemetery, and Consumer Services Act

DATE: April 7, 2010 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Messer	Burgess	BI	Fav/CS
2.			RI	
3.			GA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

Current law provides for the licensure classifications of a funeral director, embalmer, and a combination funeral director/embalmer license. Persons wishing to obtain a funeral director only license must take courses in funeral service arts and mortuary science, the same courses required for combination licenses. Mortuary science courses are required for learning the process of embalming, which funeral director only licensees are not permitted to practice. This bill allows for persons wishing to obtain a funeral director only license to take only the funeral service arts courses. Further, this bill takes several steps to ease the process for new applicants to become funeral home directors. Proponents of the bill believe that this may encourage more individuals to enter the profession who may be attracted to the personal interaction aspect of the industry but may not have an interest in learning to embalm dead bodies.

Current law allows for either a direct disposer or funeral director to serve as the direct disposer in charge of a direct disposal establishment. The bill would require a funeral director to serve as the direct disposer in charge. However, there would be a grandfather provision to allow direct disposers currently serving as direct disposers in charge to continue to do so provided they meet certain requirements. This may discourage persons from obtaining a direct disposer license as they will not be able to serve as the direct disposer in charge of a direct disposal establishment.

Current law allows either a funeral director only licensee or combination licensee to serve as the full-time funeral director in charge (FDIC) of a licensed funeral establishment. The bill would require the full-time FDIC to have a combination license. However, there would be a grandfather provision to allow current funeral director only licensees to continue to serve as the full-time FDIC.

The bill provides for certain waivers and modifications of ch. 497, F.S., in the event of a public emergency. It modifies health and safety education requirements for licensees and portions of the preneed contract provisions. The bill requires monument establishments to provide proof of liability insurance as required by law.

The bill may have a positive impact on job creation in the funeral directing profession, but may also have a negative impact on the direct disposer profession. It would not have a sizable fiscal impact on state government beyond the cost of rulemaking and a small increase in revenues generated from additional inspection of funeral homes.

This bill substantially amends the following sections of the Florida Statutes: 497.005, 497.101, 497.103, 497.140, 497.141, 497.142, 497.143, 497.147, 497.152, 497.161, 497.162, 497.166, 497.277, 497.278, 497.372, 497.373, 497.374, 497.375, 497.376, 497.378, 497.380, 497.456, 497.464, 497.602, 497.603, 497.604, and creates s. 497.4555, F.S., and repeals s. 497.367.

II. Present Situation:

For persons wishing to enter the funeral directing profession, three licenses are relevant: funeral director only licenses, embalmer only licenses, and combined funeral director and embalmer licenses. According to the Division of Funeral, Cemetery, and Consumer Services, (the Division) there are 78 funeral director only licensees, 39 embalmer only licensees, and 2450 combination funeral director and embalmer licensees within the state of Florida.

Applicants who wish to gain an embalmer only license must take courses in mortuary science, complete a one-year internship, pass state and federal law examinations and pass the Funeral Services Science section of the National Board Examination prepared by the Conference of Funeral Service Examining Boards (CFSEB). These applicants do not have to take courses in funeral service arts. Persons who wish to gain a combination license must meet the requirements for an embalmer's license listed above, as well as take approved courses in funeral service arts, and pass the Funeral Services Arts section of the National Board.

Similarly, persons wishing to gain a funeral director only license are required to take classes in both mortuary science and funeral service arts whether or not the student wishes to gain an embalming license or practice embalming. They must also complete a one-year internship, pass the state and federal laws and rules examination relating to the disposition of dead human bodies, and the Funeral Services Arts section of the National Board of Examination.

Furthermore, cremation, rather than embalming and traditional burial, has begun to increase throughout Florida and the country. Approximately 50% of all dead bodies in the state of Florida are projected to be cremated this year. This exceeds the projected national average of 38.15%

and represents an increasing percentage of all dead bodies. Thus, the industry's need for funeral directors with a scientific background in embalming may be less pertinent than it once was.

Finally, the oldest members of the baby boomer population will begin turning 65 in 2011. Florida already has the highest proportion of citizens over 65 in the country with 19% of the total population. As these members age and eventually die, the demand for funeral directors will increase.

III. Effect of Proposed Changes:

Section 1: amends s. 497.005, F.S., to define the terms "direct supervision" and "general supervision." "Direct supervision" is defined as requiring either being with the supervised person, or on the premises. This definition is contrasted with the newly defined term "general supervision," which is defined as being in proximity to the supervised person and available at all times. The Department of Financial Services (DFS) has indicated that these definitions will clarify regulatory requirements for licensees.

Section 2: amend s. 497.101, F.S. This section deletes special procedures regarding monument establishment board appointments made prior to June 1, 2006, therefore, making the provision obsolete.

Additionally, this section clarifies the requirement that a representative of the monument establishment sector be appointed to the Board. Literally read, the current law requires appointment of a monument establishment licensee. Most monument establishment licensees are corporations or LLCs. It is not practical to appoint a corporation or LLC as a board member. This bill requires that the appointee must be a principal of a monument establishment.

Section 3: amends s. 497.103, F.S., to give authority to the licensing authority to waive provisions of ch. 497, F.S., during declared emergencies.

Section 4: amends s. 497.140, F.S., to authorize an inspection fee to be charged where ch. 497, F.S., requires an inspection in connection with a change of control, ownership, or location.

Section 5: amends s. 497.141, F.S., to prohibit the issuance or renewal of a license when the applicant has a criminal record. There is an exception to this provision in cases where the applicant or licensee demonstrates that issuance or renewal will not create a public threat. Currently ch. 497, F.S., requires disclosure of criminal records on an application for a new license, but not at renewal.

This section also authorizes the licensing authority to require use of an online system. Further, this section authorizes the imposition of a fee of up to \$25 on licensees using paper forms if the licensing authority allows paper forms to be used where an online system is also available. Online application and renewal systems generally result in lower costs of regulation. However, due to inertia and traditional practices, a significant number of licensees need to be persuaded to use online systems by making it slightly more expensive to use paper systems.

Section 6: amends s. 497.142, F.S., to require, prior to an applicant becoming licensed, disclosure of crimes where the applicant pled guilty. This is considered a correction of a previous oversight. It is believed that the legislature intended that crimes to which the applicant pled guilty should be disclosed, since crimes that were pled “no contest” must also be disclosed. However, the guilty plea scenario was omitted from the statute. This change corrects that oversight.

This section also requires that the criminal records disclosure requirements for license renewals shall be the same as the requirements for initial licensure.

Section 7: amends s. 497.143, F.S., to provide for licensing authority for temporary ch. 497, F.S., licenses during an emergency situation that result in a sudden and high volume of deaths in Florida. This provision allows temporary use of retired Florida licensees, and active licensees from other states. This section also eliminates license fees for temporary licenses that are granted under this section.

Section 8: amends s. 497.147, F.S., by increasing the ability of licensees, including board members, to obtain credit toward ch. 497, F.S., continuing education requirements, for time spent attending Board meetings.

Section 9: amends s. 497.152, F.S., to clarify that a plea of guilty to specified crimes is grounds for disciplinary action under ch. 497, F.S. This bill requires, prior to an applicant becoming licensed, disclosure of crimes where the applicant pled guilty. This is considered a correction of a previous oversight. It is believed that the legislature intended that crimes to which the applicant pled guilty should be disclosed, since crimes that were pled “no contest” must be disclosed. However, the guilty plea scenario was omitted from the statute. This change corrects that oversight.

Section 10: amends s. 497.161, F.S., by authorizing the licensing authority, during declared emergencies, to suspend or modify any provisions in ch. 497, F.S., so as to allow ch. 497, F.S., licensees to provide essential services. This section provides for an approval process and approval by the Board to carry out such emergency measures.

Section 11: amends s. 497.162, F.S., regarding health and safety education. This change limits the health and safety education requirement to staff “who have direct contact with” human remains. This change would provide that an accounting clerk at the funeral home, who works in the back office and never has contact with human remains, would not be required to have the health and safety education training. This section also extends the time to 30 days (from 10 days) in which new staff must receive the training.

Section 12: amends s. 497.166, F.S., to make technical changes that have no substantive effect.

Section 13: amends s. 497.277, F.S., to provide requirements for processing fees charged to customers by cemeteries. These new provisions require that:

- Processing fees may be charged for processing, filing, and archiving or other administrative duties;

- Processing fees may not be charged in regard to opening or closing a grave or vault installation;
- Processing fees must be disclosed to the consumer;
- Processing fees must be shown on a cemetery's standard price list;
- Processing fees are not subject to trusting under s. 497.458, F.S.; and
- The Department, subject to the approval of the Board is given rulemaking authority with regard to the administration of this provision.

As a related provision, section 22 of the bill creates s. 497.4555, F.S., which authorizes a preneed licensee to charge a processing fee in preneed contracts. Under current law a specified percentage of the proceeds of the sale of a preneed contract must be placed in trust, but can be withdrawn as and when the goods or services in the preneed contract are actually provided. A processing fee related to initial sale and setup of the preneed contract file is considered earned almost immediately and so it can generally be withdrawn immediately. However, processing fees are subject to potential abuse by preneed sellers. There is an economic incentive for the preneed seller to shift as much of the preneed contract price as possible to the processing fee heading. This results in the seller getting a larger portion of the sale proceeds in their pocket at an earlier time. Currently there is no express regulation of processing fees in ch. 497, F.S. It is the Division's view that sections 13 and 22 of the bill are good first step measures in protecting preneed contract purchasers against potential abuse regarding processing fees.

Section 14: amends s. 497.278, F.S., regarding grave markers and monument providers. Current practice is for the cemetery to compete with monument establishment companies for business with regard to buying and installing grave markers and monuments. Cemeteries have valid concerns about some monument establishments that enter cemetery property and damage the cemetery during the process of installing monuments with heavy machinery. Because of this damage that the monument establishments may cause to the cemeteries, the cemeteries may have an economic incentive to restrict access of the monument establishment to cemetery property. This section provides that cemeteries may require monument establishment companies to show proof of liability insurance, and workers compensation coverage "required by law," but cemeteries may not specify the amount of liability insurance, and cemeteries may not require a surety bond.

Section 15: amends s. 497.372, F.S., to provide that electronic transmission of obituary notices and the processing of death certificates are not part of the practice of funeral directing. This provision clarifies that a funeral home's unlicensed support staff may perform the activities indicated.

Section 16: amends s. 497.373, F.S., which specifies education requirements for a funeral director license. Currently, in order to become licensed as a funeral director an applicant must also complete technical certification requirements in embalming and other deathcare area. Many persons qualified by temperament to comfort grieving families, are attracted to that aspect of being a funeral director, have no interest in embalming or other technical aspects of the deathcare industry. They may be dissuaded from becoming funeral directors due to the formal education requirement and testing on the technical side of the profession (as is required under current law). This section addresses this issue by specifying that persons seeking only a funeral director license are not required to complete the technical education requirements. The substantive

competency examination has two main parts: the arts section, and the science section. Applicants desiring to be a funeral director only must still take the Arts section of the exam.

This section also expands the scope of the “provisional license” category. This license allows an applicant who has completed the funeral director internship, and who is waiting to take the national funeral director’s exam, to work as a funeral director. Currently a provisional licensee can work only under the direct supervision of a fully licensed funeral director. This section allows the provisional licensee to work under the general supervision of the fully licensed funeral director, if the provisional licensee has passed the Florida law and rules exam.

Section 17: amends s. 497.374, F.S., pertaining to licensure by endorsement. This section is a companion to section 16 of the bill. There are two main ways to obtain a funeral director license in Florida: 1) by completing a Florida internship and taking the required examinations; or 2) by endorsement if already licensed as a funeral director in another state. The endorsement allows the applicant to dispense with the requirement of completing a Florida internship. This section specifies that endorsement applicants are not required to take and pass the technical examination, only the funeral director “Arts” examination.

Section 18: amends s. 497.375, F.S., regarding funeral director interns. This section will make it easier for qualified persons to enter the funeral director profession, because it will allow them to earn an income while they obtain formal education and complete the required internship. This is accomplished by the following:

- It will allow an intern, under specified conditions, to complete formal education coursework simultaneously with the internship (currently they must complete their formal education before the internship).
- Under specified conditions, the intern will be allowed to work under the general supervision of a fully licensed funeral director (currently the intern may only work under direct supervision).
- Under specified conditions, this section allows an intern two years to complete the internship (currently the internship must be completed in one year). This will allow the intern an additional year to complete the formal education, while interning, and working under general supervision.

This section may facilitate mid-life career changes to the funeral director profession, by persons with families and other financial obligations, who cannot give up their entire income to attend a year of formal schooling and internship.

Section 19: amends s. 497.376, F.S., by deleting subsection (2) which requires licensees to visibly display their licenses. However, this requirement has been moved and modified, as required by section 21 of the bill.

Section 20: amends s. 497.378, F.S., to remove the requirement for a continuing education course specific to HIV/AIDS in order to renew a funeral director or embalmer license. HIV/AIDS is one of a number of types of communicable diseases to which a director or embalmer may be exposed. This section retains the requirement for a general continuing education course concerning communicable diseases. The general course on communicable

diseases addresses HIV/AIDS issues, therefore, the required HIV/AIDS course becomes redundant.

Section 21: amends s. 497.380, F.S., to require that a funeral director in charge maintain a valid embalmer license or a valid combination license as an embalmer and funeral director. However, a grandfathering provision is included to allow funeral director-only licensees acting as a funeral director in charge as of September 30, 2010 to continue as a funeral director in charge subject to specified conditions in this section. This section also increases the responsibility and requirements of the funeral director in charge of an establishment and makes the funeral director in charge responsible for ensuring that the facility and all staff comply with applicable laws and rules.

This section also adds a requirement that that each licensee shall permanently affix a photograph to each funeral director or embalmer license and display each license prominently within the establishment.

Section 22: creates s. 497.4555, F.S., which authorizes a preneed licensee to charge a processing fee in preneed contracts. Under current law a specified percentage of the proceeds of the sale of a preneed contract must be placed in trust, but can be withdrawn when the goods or services in the preneed contract are actually provided. A processing fee related to initial sale and setup of the preneed contract file is considered earned almost immediately, so it can generally be withdrawn immediately. However, processing fees are subject to potential abuse by preneed sellers. There is an economic incentive for the preneed seller to shift as much of the preneed contract price as possible to the processing fee heading, because that results in the seller obtaining a larger portion of the sale proceeds at an earlier time. Currently there is no express regulation of processing fees in ch. 497, F.S. It is the Division's view that sections 13 and 22 of the bill provide a good first step in protecting preneed contract purchasers against potential abuse regarding processing fees.

Section 23: amends s. 497.456, F.S., by authorizing the licensing authority for preneed licenses to require that claims by consumers or licensees against the preneed Consumer Protection Trust Fund be sworn or affirmed and notarized.

Section 24: amends s. 497.464, F.S., by changing the requirements to establish an "Alternative Preneed Contract." This section removes the requirement that all payments by customers on preneed contracts be deposited into a Florida trust.

This section also authorizes the licensing authority to specify, by rule, certain documentation other than a death certificate, that a preneed trustee may accept as grounds for disbursing funds from the trust to the preneed licensee, upon the representation of the preneed licensee that the preneed contract beneficiary has died and the contract has been performed. Under the current statute, a death certificate is required in every case, as a condition of disbursing trust funds to the preneed licensee. Opponents of this provision believe that the requirement for a death certificate is unnecessary and adds to the cost which is ultimately passed on to the consumer. The bill specifies that in the event of partial performance, the trustee may make only a partial disbursement.

Section 25: amends s. 497.602, F.S., by removing the public license display requirement for direct disposers (note: this provision has been moved to section 27 of the bill). This section also adds a requirement that all direct disposer applicants complete an ethics course.

Section 26: amends s. 497.603, F.S., and adds a new requirement that to renew a direct disposer license, the licensee's continuing education must include a course on communicable diseases.

Section 27: amends s. 497.604, F.S., and creates new requirements to operate a direct disposal establishment. Effective October 1, 2010, this section requires that all direct disposal establishments have a licensed funeral director in charge of the direct disposal establishment. Current law requires the direct disposal establishment to have a licensed funeral director or a licensed direct disposer acting as the in-charge professional. Pursuant to this bill, a direct disposer would no longer be allowed to serve as the in-charge professional at a direct disposal establishment. However, a direct disposer currently serving as professional in charge of a direct disposal establishment may, under specified criteria in the bill, continue indefinitely to serve as the professional in-charge at that particular direct disposal establishment through the grandfather provision in this section.

This section also specifies that direct disposal establishments and all licensees working at such establishments must display their ch. 497 licenses to the public. This requirement specifies that each licensee must affix a photo of themselves to the displayed licenses and that the photo may not be more than 6 years old.

Section 28: repeals s. 497.367, F.S., which requires funeral director and embalmer licensees to complete a training course on HIV-AIDS once every six years.

Section 29: provides an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on April 7, 2010:

This committee substitute conforms language to align with the House companion; the committee substitute makes no substantive changes.

B. Amendments:

None.